service," (2) provided "within the same exchange area"[45] and (3) "subject to state regulation." As discussed below, each of these criteria are satisfied by the vast majority of cellular services.

First, cellular service is clearly an "exchange service" provided "within the same exchange area." When the Commission initially authorized cellular service, it relied on Section 221(b) to reserve jurisdiction over cellular charges to the states.[46] The Commission's acknowledgment that cellular service constitutes a local exchange service is consistent with its treatment of common carrier mobile service as exchange service generally.[47]

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[45] The requirement that an exchange service must be provided within the same exchange area follows from the definition of "telephone exchange service" contained in the Communications Act. "Telephone exchange service" is defined as:

> [S]ervice within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish subscribers

Second, GTE submits that for purposes of Section 221(b), a cellular carrier's "exchange area" must be defined as expansively as possible in order to effectuate the intent of that section. Initially, it is reasonable to assume that cellular exchange areas are larger than landline exchange areas. Not only do the MSAs upon which cellular service area were predicated frequently include interstate territories by definition, radio waves do not conform to predetermined political divisions.[48] Moreover, the change in the definition of reliable cellular service area contour (RSAC) from the 39 to the 32 dBu contour caused RSACs to expand in some cases even beyond the original MSA-based CGSAs.[49] As a result, a large percentage of cellular service areas will inevitably include incidental interstate components.

Further, the mobile nature of the cellular market requires that service be available over a widespread area. Cellular customers need service and rate structures that are based on their unique travel requirements, rather than the contours of a particular licensed service area. Competition

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[48] See, e.g., ATS Mobile Tel. v. Curtain Call Comm., Inc., 232 N.W.2d 248 (Neb. 1975). The Commission also has observed that "[c]ellular operators provide telephone service to their subscribers using radio communications and do not have telephone service area in the traditional sense." Amendment of Parts 1, 63, and 76 of the Commission's Rules to Implement the Provisions of the Cable Communications Policy Act of 1984, slip op. at ¶ 54, FCC 85-179 (1985).

[49] Of course, CGSAs and RSACs are now essentially coterminous, except for de minimus extensions.

has provided the impetus for expanding and interconnecting licensed systems to provide seamless coverage over extended areas. Even should a carrier subdivide its exchange area for rate purposes, this does not remove the carrier from the scope of Section 221(b)[50].

It follows that an exchange area under Section 221(b) clearly includes a carrier's reliable service area contour even where this area encompasses de minimus interstate extensions in which exchange-like services are provided.[51] This is consistent with previous FCC determinations in the mobile services market. For example, prior to tariff forbearance for non-dominant carriers, the FCC analyzed whether a mobile radio common carrier should be required to file federal tariffs where its RSAC crossed a state boundary. In an apparent application of Section 221(b) principles, the agency concluded that "an RCC whose reliable service area does extend beyond state borders is not required to file

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[50] See Southwestern Bell Tel. Co. v. U.S., 45 F. Supp. 403 (D.C.W.D. Mo. 1942) (existence of multiple rate charges for a landline carrier's single exchange area did not convert the exchange area into multiple exchange areas or remove it from the coverage of Section 221(b)).

[51] An RSAC-based definition is preferable to a CGSA- or an MSA/RSA-based definition of exchange area because an RSAC can extend beyond the boundaries of a market in situations where the CGSA and MSA/RSA are coterminous with the boundary line. In these situations, a call from one cell to another part of a cell in the de minimis overlap could be inappropriately defined as interexchange under a CGSA or MSA/RSA-based definition, even though no toll charges are applied.

tariffs with the FCC for such service wherever RCC service is subject to regulation by state or local authority."[52] Because cellular carriers are a class of mobile carriers, a similar policy should consistently be applied to cellular carriers.

Moreover, due to the unique nature of cellular services, a cellular exchange area should be found to include contract extensions of service to adjacent areas as well as "supersystems" or "cluster arrangements" that link MSAs and RSAs and may stretch over several states.[53] Even in such arrangements, cellular service remains primarily a local exchange offering that meets the requirements of Section 221(b).[54] The service is merely offered over an extended geographic area to accommodate the mobile communications demands of cellular customers.[55]

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[52] Policy Regarding Filing of Tariffs for Mobile Service, 53 F.C.C.2d 579, 579 (1975) (Public Notice).

[53] In this regard, GTE disagrees with CTIA's more limited interpretation of Section 221(b). See CTIA at 9 n.18.

[54] Moreover, such a liberal construction of Section 221(b) is necessary to avoid creating regulatory disparities between clustered and non-clustered systems that could further undermine cellular competitiveness in individual markets.

[55] GTE requests the Commission to clarify the scope of Section 221(b) and to provide guidelines upon which carriers may rely. For example, the Commission should clarify whether the jurisdictional guidelines it announced in regard to landline interstate, intraLATA traffic will be used in

(continued...)

Third, Section 221(b) requires that a service be "subject to regulation by a State Commission or by a local governmental authority."[56] GTE concurs with CTIA that the legislative history of Section 221(b) indicates that active state regulation is not required.[57] This is consistent with the Commission's construction of similar language in its Computer II decision. There, the FCC interpreted a provision of the 1956 AT&T consent decree allowing AT&T to enter businesses "subject to public regulation" not to require active utility regulation of those businesses.[58] An analogous interpretation is warranted here.

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[55](...continued)
assessing its jurisdiction over cellular services. See Application of Access Charges to the Origination and Termination of Interstate, IntraLATA Services and Corridor Services, 57 Rad. Reg. 2d (P & F) 1558, 1559 (1985) (Order).

[56] 47 U.S.C. § 221(b).

[57] CTIA at 7 (and sources cited therein); see also 78 Cong. Rec. 8822, 8823 (May 15, 1934) ("without some savings clause of that kind, the State commissions might be deprived

2. Other Non-Tariffable Services

A number of other services offered by cellular carriers likewise fall outside of Section 203(b). For example, Section 211 of the Act, 47 U.S.C. § 211, recognizes that contracts between carriers need not be filed as tariffs. The FCC has also ruled that billing and collection services are not common carrier services and need not be tariffed.[59] Such services encompass many "roaming" offerings of cellular carriers. Equipment rental services similarly are not tariffable under Computer II.

[59] Detariffing of Billing and Collection Services, 102 F.C.C.2d 1150 (1986) (Report and Order), recon. denied, 1 FCC Rcd 445 (1986).

VI. CONCLUSION

For the foregoing reasons, GTE recommends that the Commission clarify the scope of federal tariffing requirements as applied to cellular carriers, declare that cellular carriers are non-dominant, and further streamline, to the maximum extent allowable under the Communications Act, the tariff filing process for those cellular services subject to federal tariffing. By acting on these recommendations, the FCC can minimize the adverse impact of the AT&T v. FCC decision on its current cellular policies.

Respectfully submitted,

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March 19, 1993

Certificate of Service

I, Karen Rice, hereby certify that copies of the foregoing, "Comments of GTE Mobile Communications Incorporated", have been mailed by first class United States mail, postage prepaid on the 19th day March, 1993, to Mr. Michael F. Altschul, Vice President and General Counsel, CTIA, 1133 21st Street, N. W., Suite 300, Washington, D. C. 20036.

By Karen Rice

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